THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.7194 OF 2006

Dated: 12-04-2006

Between

Smt. Madhavi Desai, W/o. Uday K. Desai,
rep. by his Agent and Power of Attorney holder
Sri Agasthi Ramani W/o. Sri Madhavan.

...PETITIONER

AND

Greater Visakhapatnam Municipal
Corporation, Rep. by its Commissioner,
Tenneti Viswanadham Bhawan,
Asselametta Junction, Visakhapatnam.

...RESPONDENT

ORDER:

This writ petition is filed seeking Writ of Mandamus to declare the action of the respondent in taking over the property of petitioners and removing the trees and bushes thereon, covered by Sy.No.22 and Patta No.21 of Chinna Gadili Village within the limits of Greater Visakhapatnam Municipal Corporation and bounded on East: land of vendors; South: 60 Feet Road; West: Land of Agasthi Madhavan and Ramani and North: Training Centre, without following due process of law and without paying just compensation as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner are the owners of the land in a total extent of 686.11 sq. yards situated in Sy.No.22 and Patta No.21 of Chinna Gadili Village within the limits of Greater Visakhapatnam Municipal Corporation and the said property was originally conveyed on 01.02.1995 by way of a sale deed by Rayana Appala Swamy and two others in their favour and since then they have been in possession and enjoyment of the same. While so, the respondent and his men and machinery are making preparations to level the land of the petitioners by

removing the trees and bushes existing thereon to widen the existing 60 feet Mudasalova road. The learned counsel further submits that the respondent without issuing any notice and without initiating any proceedings and without paying any compensation is highhandedly interfering and middling with the property of the petitioner.

The only grievance of the petitioner is that the respondent without issuing any notice, without paying any compensation for the structures or lands and without following due process of law,
is attempting to dispossess them for the purpose of road-widening.

The learned counsel for the petitioner further submits that the action of respondent without following the due procedure prescribed under law and without paying any compensation either by way of private negotiations or by way of initiating proceedings under the Land Acquisition Act is utter violation of the principles of natural justice as well as Sections 146 and 147 of the Municipal Corporations Act
(for short 'the Act').

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of private individual is coming in the way, it is for the respondent to acquire the same either by way of initiating land acquisition proceedings or by following due process of law. This Court disposed of number of writ petitions directing the respondents not to demolish the houses of the private citizens without following due process of law.

Having regard to the facts and circumstances of the case,
this writ petition is disposed of directing the respondent not to demolish the structures or take away any portion of the property of the petitioner and not to dispossess her without following due process of law either under Section 146 or 147 of the Act or by private negotiations or by initiating the proceedings under the Land Acquisition Act, 1894. No costs.

_____

V. ESWARAIAH, J

April 12, 2006

Note: Furnish C.C of the order by 13.04.2006

(**B**/**o**)

DSK